

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	SETTLEMENT AGREEMENT FOR
)	RECOVERY OF RESPONSE COSTS
)	
BROWN & BRYANT SUPERFUND SITE)	
600 South Derby Road)	
Arvin, California)	
)	U.S. EPA Region IX
)	CERCLA Docket No. 2008-28
)	
)	
UNION PACIFIC RAILROAD COMPANY)	PROCEEDING UNDER SECTION
AND BNSF RAILWAY COMPANY,)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)
)	
SETTLING PARTIES)	
)	
_____)	

TABLE OF CONTENTS

I.	JURISDICTION	1
II.	BACKGROUND	1
III.	PARTIES BOUND	2
IV.	DEFINITIONS	2
V.	PAYMENT OF RESPONSE COSTS.....	4
VI.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT.....	5
VII.	COVENANT NOT TO SUE BY EPA.....	6
VIII.	RESERVATIONS OF RIGHTS BY EPA	7
IX.	COVENANT NOT TO SUE BY SETTLING PARTIES	7
X.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	8
XI.	RETENTION OF RECORDS	9
XII.	NOTICES AND SUBMISSIONS	10
XIII.	INTEGRATION/APPENDICES	11
XIV.	MISCELANEOUS.....	11
XV.	PUBLIC COMMENT	11
XVI.	EFFECTIVE DATE/AMENDMENTS	12

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Chief of Region IX’s Superfund Site Cleanup Branch by regional delegation R9 1290.20.
2. This Settlement Agreement is made and entered into by EPA and Union Pacific Railroad Company and BNSF Railway Company (“Settling Parties”). Each Settling Party consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Brown & Bryant Superfund Site, Arvin Pesticide Reformulation Facility (“Site”), which is located at 600 South Derby Road in Arvin, California. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
5. In performing the response action, EPA has incurred and will incur response costs at or in connection with the Site.
6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and further alleges that Settling Parties are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.
7. In November 1996, the United States and the California Department of Toxic Substances Control (“DTSC”) filed separate actions against the Settling Parties, Shell Oil Company (“Shell”), and Brown & Bryant Inc., pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover the costs of response incurred and to be incurred by the United States and DTSC at the Site. The cost recovery actions were consolidated for trial. Following trial, on July 15, 2003, the United States District Court for the Eastern District of California issued its Amended Findings of Fact and Conclusions of Law which held, among other matters, that the Settling Parties and Shell are liable under CERCLA; that the

environmental harm at the Site is reasonably capable of apportionment; that the Settling Parties are jointly and severally liable for 9% of all costs of response incurred and to be incurred by the United States and DTSC at the Site; and that Shell is severally liable for an additional 6% of all costs of response incurred and to be incurred by the United States and DTSC at the Site. The United States and DTSC appealed, and on May 25, 2008, the United States Court of Appeals for the Ninth Circuit issued its second amended opinion which reversed the district court's decision with respect to apportionment and held that the Settling Parties and Shell are jointly and severally liable for all costs of response incurred and to be incurred by the United States and DTSC at the Site. On June 23, 2008, the Settling Parties and Shell filed separate petitions for a writ of certiorari with the United States Supreme Court seeking review of the Ninth Circuit's decision. On October 1, 2008, the Supreme Court granted both petitions and consolidated the cases for oral argument.

8. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon each Settling Party and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in Appendix A attached hereto, the following definitions shall apply:
 - a. "Settlement Agreement" shall mean this Settlement Agreement for Recovery of Response Costs, EPA Region IX CERCLA Docket Number 2008-28. In the event of conflict between this Settlement Agreement and Appendix A, the Settlement Agreement shall control.
 - b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

- c. “Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. “Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVII.
- f. “ROD” shall mean the 2007 Record of Decision (“ROD”) for Operable Unit 2 (“OU2”). The remedy selected in the ROD was designed to contain and treat groundwater contaminated with pesticides in the vicinity of the Site and also provides for relocation of Arvin City Well CW-1.
- g. “Phase I” shall mean Phase I of the Remedy, as described in the attached Scope of Work, including the work associated with the relocation of Arvin City Well 1. Phase I shall not include land acquisition, water treatment facilities, water storage tanks, or any piping or pumps not located at the new well location.
- h. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹
- i. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- j. “Parties” shall mean EPA and Settling Parties.
- k. “Settled Response Costs” shall mean the funds totaling \$985,000 paid by the Settling Parties pursuant to Paragraph 11, below, which shall be used in accordance with Paragraph 14.
- l. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/cfo/finstatement/superfund/int_rate.htm.

- m. "Settling Parties" shall mean Union Pacific Railroad Company and BNSF Railway Company.
- n. "Site" shall mean the Brown & Bryant Superfund Site, Arvin Pesticide Reformulation Facility ("Site") located in Arvin, California.
- o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

- 11. Subject to Paragraph 15 below, within 30 days of the Effective Date of this Settlement Agreement, each Settling Party shall pay to EPA \$492,500, for a total of \$985,000, for Settled Response Costs.
- 12. Each Settling Party shall pay the Settled Response Costs as set forth in Paragraph 11 of this Settlement Agreement by either Electronic Funds Transfer ("EFT") or a certified or cashier's check(s), as described below:
 - a. Payment by EFT shall be made to EPA by in accordance with current EFT procedures to be provided to Settling Parties by EPA Region IX, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region (IX) and Site/Spill ID Number (09H2), and the EPA docket number for this action.
 - b. Payment by a certified or cashier's check(s) shall be made payable to "EPA Hazardous Substance Superfund," and each check, or letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region (IX) and the EPA Site/Spill ID Number (09H2), and the EPA docket number for this action. Any payment by check shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000
- 13. At the time of payment, Each Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number (09H2), and the EPA Docket Number for this action (2008-28).

14. The Settled Response Costs to be paid pursuant to Paragraph 11 shall be deposited in the Brown & Bryant Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used as described in this Paragraph. EPA will use all Settled Response Costs in the Brown & Bryant Superfund Site Special Account to implement Phase I of the ROD before using any other funds for such purposes. If any portion of the Settled Response Costs remains in the Brown & Bryant Superfund Site Special Account after full implementation of Phase I of the ROD, EPA will, after consultation with the Settling Parties, apply such funds for other response costs at or in connection with the Site. In the event that there are no additional costs at the Site to which the funds can be applied, EPA may transfer the funds to the EPA Hazardous Substance Superfund.
15. EPA shall provide the Settling Parties with a credit, in the amount of Settled Response Costs paid by the Settling Parties, against the Settling Parties' liability for response costs at the Site.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. Interest on Late Payments. If Settling Parties fail to make any payment required by Paragraph 11 by the required due date, Interest shall begin to accrue on the unpaid balance on the due date and shall continue to accrue through the date of payment.
17. Stipulated Penalty.
 - a. If the amount due to EPA under Paragraph 11 is not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$2,000 per violation per day that such payment is late.
 - b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number (09H2), and the EPA Docket Number for this action. Any Settling Party required to pay stipulated penalties shall send its check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000

- c. At the time of each payment, each Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number (09H2), and the EPA Docket Number for this action (2008-28).
 - d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, the Settling Party or Parties against whom enforcement is sought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.
19. The obligations of Settling Parties to pay the total amount owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make or contribute to the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments. The joint and several obligations of the Settling Parties under this Settlement Agreement relate only to monies owed under Paragraph 11 of this Settlement Agreement and have no other force or effect on any alleged liability of any Settling Party.
20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

21. Covenant Not to Sue by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Settled Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is

conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:
- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
 - b. liability for any costs incurred or to be incurred by the United States that are not Settled Response Costs;
 - c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
 - d. criminal liability; and
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
23. The Settling Parties recognize and acknowledge that the settlement embodied in this Settlement Agreement relates only to Settled Response Costs, and that in order to complete Phase I, and in order to oversee Phase 1 and to commence work associated with other portions of the ROD and SOW, EPA may incur response costs in addition to Settled Response Costs.
24. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

25. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Settled Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claims arising out of the response actions at the Site for which the Settled Response Costs are incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
 - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Settled Response Costs.
26. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).
28. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.
29. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposed of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Settled Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for

purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Parties have, as of the Effective Date, resolved their liability to the United States for Settled Response Costs .

30. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it after the Effective Date for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it after the Effective Date for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.
31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. RETENTION OF RECORDS

32. Until 5 years after the effective date of this Settlement Agreement, each Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.
33. After the conclusion of the 5-year document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and

any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

34. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Joshua Wirschafter
U.S. EPA
Office of Regional Counsel, ORC-3
75 Hawthorne Street
San Francisco, California 94105

And

Travis Cain
U.S. EPA
Superfund Division, SFD-7-2
75 Hawthorne Street
San Francisco, California 94105

As to Settling Parties:

Vice President and General Counsel -- Law
BNSF Railway Company
Post Office Box 961039
Fort Worth, TX 76161-0039

Robert Bylsma, Esq.
Law Department
Union Pacific Railroad Company
10031 Foothills Boulevard, Suite 200
Roseville, CA 95747-7101

And

Marc Zeppetello
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104

XIII. INTEGRATION/APPENDICES

36. This Settlement Agreement and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: "Appendix A" is the Scope of Work, dated October 2, 2008.

XIV. ACCOUNTING FOR EXPENDITURES

37. By the first and second anniversaries of the Effective Date, EPA will provide the Settling Parties with an itemized cost summary document, which provides an accounting of how EPA spent the Settled Response Costs paid pursuant to Paragraph 11 of this Settlement Agreement.

XV. PUBLIC COMMENT

38. Final acceptance and signature by EPA of this Settlement Agreement shall be subject to and shall not occur before the close of a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XVI. EFFECTIVE DATE/AMENDMENTS

39. The effective date of this Settlement Agreement shall be the date upon which it is signed by EPA. EPA will provide the representatives of each Settling Party identified in Section XII (Notices and Submissions) with a copy of the notice that the public comment period has closed.
40. This Settlement Agreement may be amended by mutual agreement of EPA and Settling Parties. Amendments shall be in writing and shall be effective when signed by the Assistant Director, Superfund Division, Site Cleanup Branch.

IT IS SO AGREED:

U.S. Environmental Protection Agency

BY: _____
Kathleen Salyer, Assistant Director
Superfund Division
California Site Cleanup Branch
U.S. EPA, Region IX

DATE: _____

THE UNDERSIGNED SETTLING PARTIES enter into this Settlement Agreement in the matter of U.S. EPA Docket Number 2008-0028, relating to the Brown & Bryant Superfund Site, located in Arvin, California.

FOR BNSF RAILWAY COMPANY:

BY: _____ DATE: _____

NAME: _____

ITS: _____

FOR UNION PACIFIC RAILROAD COMPANY:

BY: _____ DATE: _____

NAME: _____

ITS: _____